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% 07.08.2006

Present: Mr. Sandeep Aggarwal for the petitioners.
Ms. Mukta Gupta, Standing Counsel with
Ms. Rajdipa Behura & Mr. Akshai Malik for the State.

+ WP (Crl.) No. 1053-54/2005
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Petitioner No. 1 is the Superintending Engineer and petitioner No. 2 is the Executive Engineer with the Delhi Jal Board. They are public servants within the meaning of Section 100 of the Delhi Water Board Act, 1998 read with Section 21 of the Indian Penal Code. At the relevant time petitioner No. 1 was posted with Delhi Jal Board at its Rithala Sewage Treatment Plan in Rohini. According to the petitioners, petitioner No. 2 at the relevant time was posted in Connaught Place and not at Rithala Sewage Treatment Plan of Delhi Jal Board in Rohini. A complaint for violation of various provisions of the Factories Act was filed against the petitioners on 08.11.2004. This complaint was filed in the Court of Sh. P.S. Malik, Metropolitan Magistrate, Delhi. The violation alleged against the petitioners was to the following effect:-

Signature Not Verified
Digitally Signed By:AMULYA
Signing Date:06.11.2023 21:42
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

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That the following registers/records had not been produced on demand at the time of Inspection amounting to contravention of the provisions of the Rule 102 of the Delhi Factories Rules 1950 read with Section 9 (d) of the Factories Act, 1948.

(a) **Muster Roll in Form No. 26 (including Contractors workers)**

(b) **Adult worker Register (including Contractors workers)**

(c) **Accident Register in Form No. 27.**

(d) **Leave with Wages Register**

(e) **Inspection Book**

(f) **Register of examination of Gas Holders in Form 7A as per Rule 56 A**

(g) **Register of examination of Chain Pulley Block as per Rule 65 A.**

The Metropolitan Magistrate before whom the complaint was filed took cognizance of the same and passed summoning order against the petitioners. It is aggrieved by the said summoning order that the petitioner have preferred the present writ petition.

In response to the notice of this writ petition, Status Report has been filed on behalf of the respondent. The same has been perused by me.

The learned counsel for the petitioners has relied upon the provisions of Section 92 and 95 of the Delhi Water Board Act, 1998 and on the strength of these statutory provisions, he has contended that no complaint against the petitioners could have been filed except by a Chief Executive Officer of Delhi Jal Board or any other Officer authorized by the Board either by a special or general order in this behalf. It shall be necessary to refer to the provisions of Section 92 and 95 of the Delhi Water Board Act 1998 and the same are reproduced here-in-below:-

> **92. Prosecutions:- No Court shall proceed to the trial of any offence except on the complaint of upon information received from the Chief Executive Officer or any other officer authorized by the Board by a general or special order in this behalf.**
>
> **95. Protection of action taken in good faith:- No suit, prosecution or other proceedings shall be instituted or shall be entertained in any Court**

against any member of the Board or of the Consultative Council, or against any other officer or employee of the Board or against any person acting under the order or directions of any such person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation or other instrument made thereunder.

In view of plain language of Section 92 & 95 of the Delhi Water Board Act, 1998 reproduced here-in-above, it is amply clear that the petitioners are protected from prosecution in relation to any act done by them in relation to their official duties. Admittedly the complaint against them was not filed either by the Chief Executive Officer of the Delhi Jal Board or any other Officer authorized by the Board in that behalf.

Under the circumstances, I am of the view that this complaint against the petitioners is not maintainable and hence all proceedings taken pursuant to the said complaint are dropped.

This writ petition is allowed and stands disposed of accordingly.

AUGUST 07, 2006, a **S.N. AGGARWAL, J**